

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In Re:)	
FRANCOIS YOUHANNA)	Chapter 13
dba TARGET PIZZA AND)	Case No. 15-11440-FJB
SUBS, INC.)	
Debtor(s))	
)	

**MOTION OF THE DEBTOR, FRANCOIS YOUHANNA, TO STRIKE
NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES,
AND CHARGES AS FILED BY EAST BOSTON SAVINGS BANK,
PURSUANT TO FRBP, RULE 3002-1(c)**

1. The Debtor filed this Voluntary Chapter 13 Bankruptcy Petition on April 14, 2015.
2. The Meeting of Creditors and Examination of the Debtor by the Chapter 13 Trustee all as pursuant to 11 U.S.C. §341 was scheduled for May 12, 2015.
3. The East Boston Savings Bank filed a Proof of Claim for the first mortgage on July 4, 2015 in the amount of \$377,056.30 with a \$55,369.36 mortgage arrearage.
4. The East Boston Savings Bank then filed a Proof of Claim for the second mortgage on the same day in the amount of \$128,603.15 with an arrearage of \$13,073.52.
5. Both Proofs of Claim contain substantial late fees as a component of the claim. Thus, the Debtor paid all of the late fees outstanding on the date of the filing of the Chapter 13 Bankruptcy through the Bankruptcy Plan. The Debtor's Chapter 13 Plan was confirmed by Order of this Court on May 1, 2015.
6. The Debtor in this proceeding, Francois Youhanna, is a small businessman operating a pizza parlor in West Roxbury.
7. The Debtor and his family live in a small apartment above the pizza parlor. The Chapter 13 Plan submitted by the Debtor and confirmed by this Court required that the Debtor pay, in addition to his current mortgage payments and other current bills, the sum of \$161,297.00 to the Chapter 13 Trustee to properly fund his Plan.

8. On February 18, 2020, the Debtor completed his Chapter 13 Plan by making his final payment to the Chapter 13 Trustee thus paying over the sum of \$161,297.00.
9. On February 10, 2020, the East Boston Savings Bank filed a Notice of Post-Petition Mortgage Fees, Expenses, and Charges, in the amount of \$15,474.28.
10. An examination of the details attached to East Boston Savings Bank's Notice of Post-Petition Mortgage Fees, Expenses, and Charges, indicates that the post-petition legal fees began accumulating in April of 2015 and continued until February of 2019.
11. The Debtor directs the Court's attention to Federal Rules of Bankruptcy Procedure 3002.1(c). To quote "Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the Debtor, Debtor's Counsel, and the Trustee, a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) the holder asserts are recoverable against the Debtor or against the Debtor's principal residence. The Notice *shall* be served within 180 days after the date on which the fees, expenses, or charges are incurred." (emphasis added)
12. The Debtor maintains that the East Boston Savings Bank's failure to provide the parties with any notice of post-petition mortgage fees, expenses, and charges was not provided to the Debtor until the conclusion of the case; years beyond the 180-day requirement as outlined in Federal Rules of Bankruptcy Procedure 3002.1(c).
13. The Debtor points to the case, In Re: Hale (Bankr. S.C. 2015) as filed in the United States Bankruptcy Court, District of South Carolina, dated March 16, 2015. In that decision the Court observed that Rule 3002.1 was adopted to resolve the problems encountered by Chapter 13 debtors who utilized Section 1322(b)(5), as in this case, to cure mortgage defaults in their Chapter 13 Plan. For many and various reasons, creditors would not inform the debtors that these charges had been incurred until after the Chapter 13 case was closed. This outcome, however, was inconsistent with the goal of providing debtors with a fresh start. Rule 3002.1 attempts to remedy this problem by *requiring* creditors provide debtors with a timely notice of any post-petition charges or payment charges. Rule 3002.1 "applies in a Chapter 13 case to claims that are (1) secured

by a security interest in the debtor's principal residence, and (2) provided for under Section 1322(b)(5) of the Code in the Debtor's Plan.

Federal Rules of Bankruptcy Procedure 3002.1(c) specifies that notice shall be prepared using the appropriate Official Form as filed as a supplement to the Creditor's Proof of Claim.

14. Since it grossly violated the goal of providing a "fresh start" to the Debtor, Francois Youhanna maintains that the absence of any such notice from the East Boston Savings Bank during the pendency of this case regarding a Notice of Post-Petition Mortgage Fees, Expenses, and Charges now prohibits the East Boston Savings Bank from coming into this Court at the *conclusion* of the Debtor's Chapter 13 Bankruptcy proceeding. Failure to provide proper notice to the Debtor pursuant to the requirements of Federal Rules of Bankruptcy 3002.1(c), and in light of such failure the mortgage fees, expenses, and charges must be stricken.

August 10, 2020

Respectfully Submitted by
Counsel for the Debtor

/s/ Joseph P. Foley
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within **MOTION OF THE DEBTOR, FRANCOIS YOUHANNA, TO STRIKE NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES AS FILED BY EAST BOSTON SAVINGS BANK, PURSUANT TO FRBP, RULE 3002-1(c)** was served upon the Debtor and those parties listed on the following service list by first class mail, postage prepaid or electronic transmission:

August 10, 2020

Respectfully Submitted by
Counsel for the Debtor

/s/ Joseph P. Foley
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